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11 *Attorneys for Plaintiff*

12  
13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**  
15

16 JEFF YOUNG, individually and on behalf of  
all others similarly situated,

17 Plaintiff,

18 vs.

19 CREE Inc.,

20 Defendant.  
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28

CASE NO. 4:17-cv-06252-YGR

**CLASS ACTION**

**DECLARATION OF MELISSA S.  
WEINER IN SUPPORT OF PLAINTIFF'S  
MOTION FOR CLASS CERTIFICATION**

Date: May 28, 2019

Time: 2:00 p.m.

Crtrm.: 1, 4th Floor, Oakland

Complaint Filed: October 27, 2017

Trail Date: N/A

1 I, Melissa S. Weiner, declare as follows:

2 1. I am an attorney duly admitted to practice before this Court. I am a partner at the  
3 firm of Pearson, Simon & Warshaw, LLP (“PSW”), one of the law firms representing Plaintiff  
4 Jeffry Young and the Proposed Class in this case. PSW associated with Audet & Partners, The  
5 Sultzer Law Group, Cuneo, Gilbert & LaDuca and Levin, Sedran & Berman in this action  
6 (together with PSW, “Class Counsel”).

7 2. I submit this declaration in support of Plaintiffs’ Motion for Class Certification  
8 (“Motion”). I am one of the attorneys principally responsible for the handling of this matter for  
9 PSW. I am personally familiar with the facts set forth in this declaration. If called as a witness I  
10 could and would competently testify to the matters stated herein.

11 3. Attached as **Exhibit 1** is a true and correct copy of an Expert Witness Report of  
12 Plaintiff’s Expert Stefan Boedeker in support of Plaintiff’s Motion for Class Certification. The  
13 Boedeker Report, dated January 18, 2019, discusses, analyzes, and quotes extensively from  
14 commercially sensitive, proprietary documents that Defendants’ have designated as  
15 “Confidential.” Plaintiff is therefore filing it under seal in compliance with the provisions of the  
16 proposed Stipulated Protective Order (Dkt. No. 75).

17 4. Attached as **Exhibit 2** is a true and correct copy of excerpts of the Deposition of  
18 Scott Schwab, taken in this matter on January 4, 2019. Scott Schwab is the VP of Cree’s LED  
19 Lamp product line and Cree’s 30(b)(6) designee for most relevant categories. Defendants have  
20 designated his testimony to be “Confidential” and therefore Plaintiff is filing it under seal in  
21 compliance with the provisions of the proposed Stipulated Protective Order.

22 5. Attached as **Exhibit 3** is a true and correct copy of excerpts of the Deposition of  
23 Plaintiff Jeffry Young, taken in this matter on September 18, 2018.

24 6. Attached as **Exhibit 4** is a true and correct copy of a document produced in  
25 discovery by Defendant and bates stamped CREE\_00049176.

26 7. Attached as **Exhibit 5** is a true and correct copy of a document produced in  
27 discovery by Defendant and bates stamped CREE\_00050253. The document has been designated  
28 “Confidential” by Defendant, and therefore, Plaintiff is filing it under seal in compliance with the

1 provisions of the proposed Stipulated Protective Order.

2       8. Attached as **Exhibit 6** is a true and correct copy of a document produced in  
3 discovery by Defendant and bates stamped CREE\_00050252. The document has been designated  
4 “Confidential” by Defendant, and therefore, Plaintiff is filing it under seal in compliance with the  
5 provisions of the proposed Stipulated Protective Order.

6       9. Attached as **Exhibit 7** is a true and correct copy of a document produced in  
7 discovery by Defendant and bates stamped CREE\_00059264.

8       10. Attached as **Exhibit 8** is a true and correct copy of a document produced in  
9 discovery by Defendant and bates stamped CREE\_00049050-51.

10       11. Attached as **Exhibit 9** is a true and correct copy of a document produced in  
11 discovery by Defendant and bates stamped CREE\_00032364.

12       12. Attached as **Exhibit 10** is a true and correct copy of a document produced in  
13 discovery by Defendant and bates stamped CREE\_00032386.

14       13. Attached as **Exhibit 11** is a true and correct copy of a document produced in  
15 discovery by Defendant and bates stamped CREE\_00032398.

16       14. Attached as **Exhibit 12** is a true and correct copy of a document produced in  
17 discovery by Defendant and bates stamped CREE\_00032399.

18       15. Attached as **Exhibit 13** is a true and correct copy of a document produced in  
19 discovery by Defendant and bates stamped CREE\_00032402.

20       16. Attached as **Exhibit 14** is a true and correct copy of a document produced in  
21 discovery by Defendant and bates stamped CREE\_00032478.

22       17. Attached as **Exhibit 15** is a true and correct copy of a document produced in  
23 discovery by Defendant and bates stamped CREE\_00032634.

24       18. Attached as **Exhibit 16** is a true and correct copy of a document produced in  
25 discovery by Defendant and bates stamped CREE\_00032814.

26       19. Attached as **Exhibit 17** is a true and correct copy of a document produced in  
27 discovery by Defendant and bates stamped CREE\_00032817.

28       20. Attached as **Exhibit 18** is a true and correct copy of a document produced in

1 discovery by Defendant and bates stamped CREE\_00032825.

2 21. Attached as **Exhibit 19** is a true and correct copy of a document produced in  
3 discovery by Defendant and bates stamped CREE\_00032827.

4 22. Attached as **Exhibit 20** is a true and correct copy of a document produced in  
5 discovery by Defendant and bates stamped CREE\_00032917.

6 23. Attached as **Exhibit 21** is a true and correct copy of a document produced in  
7 discovery by Defendant and bates stamped CREE\_00032919.

8 24. Attached as **Exhibit 22** is a true and correct copy of a document produced in  
9 discovery by Defendant and bates stamped CREE\_00032960.

10 25. Attached as **Exhibit 23** is a true and correct copy of a document produced in  
11 discovery by Defendant and bates stamped CREE\_00032965.

12 26. Attached as **Exhibit 24** is a true and correct copy of a document produced in  
13 discovery by Defendant and bates stamped CREE\_00032971.

14 27. Attached as **Exhibit 25** is a true and correct copy of a document produced in  
15 discovery by Defendant and bates stamped CREE\_00032977.

16 28. Attached as **Exhibit 26** is a true and correct copy of a document produced in  
17 discovery by Defendant and bates stamped CREE\_00032983.

18 29. Attached as **Exhibit 27** is a true and correct copy of a document produced in  
19 discovery by Defendant and bates stamped CREE\_00032985.

20 30. Attached as **Exhibit 28** is a true and correct copy of a document produced in  
21 discovery by Defendant and bates stamped CREE\_00032987.

22 31. Attached as **Exhibit 29** is a true and correct copy of a document produced in  
23 discovery by Defendant and bates stamped CREE\_00032359.

24 32. Attached as **Exhibit 30** is a true and correct copy of a document produced in  
25 discovery by Defendant and bates stamped CREE\_00032360.

26 33. Attached as **Exhibit 31** is a true and correct copy of a document produced in  
27 discovery by Defendant and bates stamped CREE\_00032361.

28 34. Attached as **Exhibit 32** is a true and correct copy of a document produced in

1 discovery by Defendant and bates stamped CREE\_00032362.

2 35. Attached as **Exhibit 33** is a true and correct copy of a document produced in  
3 discovery by Defendant and bates stamped CREE\_00032369.

4 36. Attached as **Exhibit 34** is a true and correct copies of a document produced in  
5 discovery by Defendant and bates stamped CREE\_00032379.

6 37. Attached as **Exhibit 35** is a true and correct copy of a document produced in  
7 discovery by Defendant and bates stamped CREE\_00032381.

8 38. Attached as **Exhibit 36** is a true and correct copy of a document produced in  
9 discovery by Defendant and bates stamped CREE\_00032383.

10 39. Attached as **Exhibit 37** is a true and correct copy of a document produced in  
11 discovery by Defendant and bates stamped CREE\_00032385.

12 40. Attached as **Exhibit 38** is a true and correct copy of a document produced in  
13 discovery by Defendant and bates stamped CREE\_00032391.

14 41. Attached as **Exhibit 39** is a true and correct copy of a document produced in  
15 discovery by Defendant and bates stamped CREE\_00032415.

16 42. Attached as **Exhibit 40** is a true and correct copy of a document produced in  
17 discovery by Defendant and bates stamped CREE\_00032418.

18 43. Attached as **Exhibit 41** is a true and correct copy of a document produced in  
19 discovery by Defendant and bates stamped CREE\_00032431.

20 44. Attached as **Exhibit 42** is a true and correct copy of a document produced in  
21 discovery by Defendant and bates stamped CREE\_00032432.

22 45. Attached as **Exhibit 43** is a true and correct copy of a document produced in  
23 discovery by Defendant and bates stamped CREE\_00032446.

24 46. Attached as **Exhibit 44** is a true and correct copy of a document produced in  
25 discovery by Defendant and bates stamped CREE\_00032448.

26 47. Attached as **Exhibit 45** is a true and correct copy of a document produced in  
27 discovery by Defendant and bates stamped CREE\_00032483.

28 48. Attached as **Exhibit 46** is a true and correct copy of a document produced in

1 discovery by Defendant and bates stamped CREE\_000004.

2 49. Attached as **Exhibit 47** is a true and correct copy of a document produced in  
3 discovery by Defendant and bates stamped CREE\_00032357.

4 50. Attached as **Exhibit 48** is a true and correct copy of a document produced in  
5 discovery by Defendant and bates stamped CREE\_00049124. The document has been designated  
6 “Confidential” by Defendant, and therefore, Plaintiff is filing it under seal in compliance with the  
7 provisions of the proposed Stipulated Protective Order.

8 51. Attached as **Exhibit 49** is a true and correct copy of a document produced in  
9 discovery by Defendant and bates stamped CREE\_00049110. The document has been designated  
10 “Confidential” by Defendant, and therefore, Plaintiff is filing it under seal in compliance with the  
11 provisions of the proposed Stipulated Protective Order.

12 52. Attached as **Exhibit 50** is a true and correct copy of a document produced in  
13 discovery by Defendant and bates stamped CREE\_00049122. The document has been designated  
14 “Confidential” by Defendant, and therefore, Plaintiff is filing it under seal in compliance with the  
15 provisions of the proposed Stipulated Protective Order.

16 53. Attached as **Exhibit 51** is a true and correct copy of a document produced in  
17 discovery by Defendant and bates stamped CREE\_00055743. The document has been designated  
18 “Confidential” by Defendant, and therefore, Plaintiff is filing it under seal in compliance with the  
19 provisions of the proposed Stipulated Protective Order.

20 54. Attached as **Exhibit 52** is a true and correct copy of a declaration submitted by  
21 Plaintiff Jeffrey Young.

22 55. Attached as **Exhibit 53** is a true and correct copy of a chart prepared by Plaintiff  
23 which goes through a substantial number of labels, many of which are attached hereto as exhibits  
24 and are identified by Bates number in Exhibit 53. Exhibit 53 provides a chart of the marketing  
25 representations on those labels regarding longevity, cost savings, and warranty.

26 56. Attached as **Exhibit 54** is a true and correct copy of a document produced in  
27 discovery by Defendant and bates stamped CREE\_00068794-68813 at 68800.

28 57. Attached as **Exhibit 55** is a true and correct copy of excerpts of a document

1 produced in discovery by Defendant and bates stamped CREE\_00051023-24, 51047. The  
 2 document has been designated “Confidential” by Defendant, and therefore, Plaintiff is filing it  
 3 under seal in compliance with the provisions of the proposed Stipulated Protective Order.

4 58. Attached as **Exhibit 56** is a true and correct copy of excerpts of a document  
 5 produced in discovery by Defendant and identified at the Deposition of Scott Schwab as Exhibit 3,  
 6 a chart of manufacturers’ suggested retail prices for the bulbs. The document has been designated  
 7 “Confidential” by Defendant, and therefore, Plaintiff is filing it under seal in compliance with the  
 8 provisions of the proposed Stipulated Protective Order.

9 59. Attached as **Exhibit 57** is a true and correct copy of a Cree Marketing Document  
 10 taken from the Cree website, located at  
 11 [https://lighting.cree.com/Coveo\\_Rest/searchresults/indexall?searchCollection=%40syscollection%](https://lighting.cree.com/Coveo_Rest/searchresults/indexall?searchCollection=%40syscollection%3DLighting)  
 12 [3DLighting](https://lighting.cree.com/Coveo_Rest/searchresults/indexall?searchCollection=%40syscollection%3DLighting), (last viewed Jan. 18, 2019), titled the A21 Series LED Lamp Sales Sheet.

13 60. Attached as **Exhibit 58** is a true and correct copy of excerpts of a Cree Marketing  
 14 Document taken from the Cree website,  
 15 [https://lighting.cree.com/Coveo\\_Rest/searchresults/indexall?searchCollection=%40syscollection%](https://lighting.cree.com/Coveo_Rest/searchresults/indexall?searchCollection=%40syscollection%3DLighting)  
 16 [3DLighting](https://lighting.cree.com/Coveo_Rest/searchresults/indexall?searchCollection=%40syscollection%3DLighting), (last viewed Jan. 18, 2019), titled the BR40 LED Lamp Sales Sheet.

17 61. Attached as **Exhibit 59** is a true and correct copy of a picture of a label for the  
 18 BR30 Gen4-65W daylight lamp found on the internet at [https://picclick.com/CREE-65W-](https://picclick.com/CREE-65W-Equivalent-Daylight-5000K-BR30-Dimmable-LED-132785029809.html)  
 19 [Equivalent-Daylight-5000K-BR30-Dimmable-LED-132785029809.html](https://picclick.com/CREE-65W-Equivalent-Daylight-5000K-BR30-Dimmable-LED-132785029809.html). (last viewed January 18,  
 20 2019).

21 62. Attached as **Exhibit 60** is a true and correct copy of a picture of a label for the Cree  
 22 2700K Soft White LED 60w replacement 4Flow design, found on the internet at  
 23 [https://static1.squarespace.com/static/55d54e65e4b0a5b20386b385/t/5616bf96e4b0e9833849a3c5](https://static1.squarespace.com/static/55d54e65e4b0a5b20386b385/t/5616bf96e4b0e9833849a3c5/1444331519419/)  
 24 [/1444331519419/](https://static1.squarespace.com/static/55d54e65e4b0a5b20386b385/t/5616bf96e4b0e9833849a3c5/1444331519419/) (last viewed January 18, 2019).

25 63. Attached as **Exhibit 61** is a true and correct copy of a picture of a label for the Cree  
 26 Soft White LED 100w replacement bulb, found on the internet at  
 27 [https://www.geek.com/gadgets/crees-new-100w-led-bulb-looks-like-a-bulb-and-its-just-20-](https://www.geek.com/gadgets/crees-new-100w-led-bulb-looks-like-a-bulb-and-its-just-20-1587558/)  
 28 [1587558/](https://www.geek.com/gadgets/crees-new-100w-led-bulb-looks-like-a-bulb-and-its-just-20-1587558/). (last viewed January 18, 2019).



64. Attached as **Exhibit 62** is a true and correct copy of a picture of the label for the Cree 5000K Daylight LED 40W Replacement bulb, found on the internet at <https://www.amazon.com/Equivalent-Daylight-5000K-Filament-Design/dp/B01B0IY4EI> (last viewed January 17, 2019)

65. Attached as **Exhibit 63** is a true and correct copy of a picture of the label for the Cree 2700K Soft White 60W Replacement, found online at <https://www.consumerreports.org/products/lightbulb/cree-60w-4flow-replacement-a19-a-better-led-bulb-304390/overview/> (last viewed January 17, 2019).

66. Attached as **Exhibit 64** is a true and correct copy of a picture of a label for the Cree Soft White LED 100w (BR30 Flood) replacement bulb, found on the internet at <https://www.ebay.com/p/Cree-100w-Equivalent-Soft-White-2700k-Br30-Dimmable-LED-Light-Bulb-100-Watt/12010953441> (last viewed January 17, 2019).

67. Attached as **Exhibit 65** is a true and correct copy of a picture of a label for the Cree Soft White LED 100w replacement bulb, found on the internet at <https://www.techspot.com/news/62108-cree-launches-new-led-light-bulb-lasts-nearly.html> (last viewed January 17, 2019).

68. Attached as **Exhibit 66** is a true and correct copy of the *curriculum vitae* of Michael McShane of the law firm of Audet & Partners, LLP, counsel of record for Plaintiff and the putative class. Mr. McShane devoted the last 30 years of his practice exclusively to the representation of Plaintiffs in class action litigation. He has been appointed by numerous Courts throughout the United States to act as Lead Counsel, Class Counsel and to serve on various Executive and Steering Committees. Those cases include consumer protection litigation and products liability claims. Since the passage of the Class Action Fairness Act in 2005, his practice has primarily been in Federal Court.

69. Attached as **Exhibit 67** is a true and correct copy of the *curriculum vitae* for the law firm of Levin, Sedran & Berman, one of the counsel of record for Plaintiff and the putative class. Charlie Schaffer of the law firm of Levin, Sedran & Berman has litigated class action matters for over 20 years and has obtained significant results on behalf of plaintiffs. He has been



1 appointed in leadership positions in high profile class actions throughout the United States in  
2 product liability and consumer protection actions.

3 70. Attached as **Exhibit 68** is a true and correct copy of the *curriculum vitae* for the  
4 law firm of Pearson, Simon & Warshaw, LLP, one of the counsel of record for Plaintiff and the  
5 putative class. The attorneys at PSW have represented a wide range of clients in complex litigation  
6 and class actions. PSW's firm resume reflects that the attorneys in this case have successfully  
7 adjudicated some of the largest and most important class action lawsuits in the United States and  
8 have obtained approximately three billion dollars in settlements and verdicts in a wide range of  
9 cases. For example, PSW served as Co-Lead Counsel in *In re Credit Default Swaps Antitrust*  
10 *Litigation*, MDL No. 2476 (S.D.N.Y.), an antitrust class action alleging an anticompetitive  
11 conspiracy by the largest international banks and financial institutions in the world to fix the price  
12 of credit default swaps. That case resulted in \$1.86 billion in settlements, making it one of the  
13 largest civil lawsuit recoveries in history. PSW also served as Co-Lead Counsel on behalf of the  
14 Direct Purchaser Plaintiffs in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827  
15 (N.D. Cal.). In that case, we helped secure a settlement of over \$400 million for the Class and  
16 obtained an \$87 million verdict, before trebling, following a five-week trial against the only  
17 remaining defendant in the case, Toshiba Corporation and its related entities. In addition to those  
18 listed above, PSW has served as lead or co-lead counsel in some of the most advanced and cutting-  
19 edge class actions in the country, including: *In re Lithium Ion Batteries Antitrust Litigation*, MDL  
20 No. 2420 (N.D. Cal.); *In re Potash Antitrust Litigation (II)*, MDL No. 1996 (N.D. Ill.); and *In re*  
21 *Carrier IQ Consumer Privacy Litigation*, MDL No. 2330 (N.D. Cal.); *In re Santa Fe Natural*  
22 *Tobacco Company Marketing and Sales Practices Litigation*, MDL No. 2695 (D.N.M.).

23 71. Attached as **Exhibit 69** is a true and correct copy of the *curriculum vitae* for the  
24 law firm of Cuneo, Gilbert & LaDuca, one of the counsel of record for Plaintiff and the putative  
25 class. Cuneo Gilbert & LaDuca has served as Lead Counsel and in Plaintiff Steering Committee  
26 roles in various significant class action and antitrust cases throughout the United States.  
27 Additionally, Cuneo Gilbert & LaDuca attorneys have held positions of trust in state or federal  
28 governments.

72. Attached as **Exhibit 70** is a true and correct copy of the *curriculum vitae* for the law firm of The Sultz Law Group, P.C., one of the counsel of record for Plaintiff and the putative class. The Sultz Law Group (“SLG”) focuses on complex civil litigation, including consumer class actions, many of which involve misrepresentations regarding consumer products. Since the firm’s founding in 2013, it has acted as lead counsel in numerous high-profile consumer fraud and false advertising class actions, including: *Vincent, Wesley, et al. v People Against Dirty, PBC. and Method Products, PBC.*, No. 7:16-cv-06936 (S.D.N.Y.) (served as co-lead counsel and obtained settlement fund of \$2.8 million on behalf of national class of consumers who purchased cleaning products deceptively marketed as “Natural”); *Run Them Sweet, LLC v. CPA Global, Ltd., et al.*, No. 1:16-cv-1347 (E. D. Va.) (obtained settlement fund of \$5.6 million on behalf of consumers who were overcharged with respect to foreign patent renewal services); *Rapoport-Hecht, Tziva et al. v. Seventh Generation, Inc.*, No. 14-cv-9087 (S.D.N.Y.) (served as co-lead counsel and obtained settlement fund of \$4.5 million on behalf of a national class of consumers who purchased cleaning products deceptively marketed as “Natural”); *Davenport, Sumner, et al. v. Discover Financial Services, et al.*, No. 15-cv-06052 (N.D. Ill.) (served as co-lead counsel and obtained settlement fund of \$5.6 million for victims of violations of the Telephone Consumer Protection Act). SLG is headquartered in New York and maintains offices in New Jersey and Pennsylvania. The firm is included in Martindale-Hubbell’s Bar Register of Preeminent Lawyers for its class action practice. Jason Sultz and Joseph Lipari are AV rated by Martindale-Hubbell and have been selected as Super Lawyers. In addition, they have both been selected as the American Law Media’s Mass Tort Lawyer of the Year. The firm’s founding partner, Jason Sultz, has earned selection as a Fellow of the Litigation Counsel of America, recognizing the country’s top trial attorneys. The firm’s class action practice has been featured in numerous publications, including Law360, Inside Counsel Magazine, Risk Management Magazine, and CNBC News. In addition, the attorneys within the firm have written and lectured extensively on class action practice.

73. Plaintiff’s Counsel has spent many of hours diligently and passionately pursuing the instant matter on behalf of Plaintiff Cover and the putative class. The Court is well-aware of

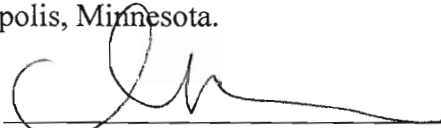
1 the procedural history of the instant action, but in summary Plaintiff's Counsel has represented  
2 Plaintiff and the putative class through dispositive motion briefing, extensive discovery involving  
3 voluminous document production, and depositions.

4 74. During the course of this litigation, Plaintiff's Counsel have relied on their  
5 extensive experience and qualifications to litigate this action in furtherance of the interests of the  
6 Class members through strategy meetings, extensive discovery and document review, and class  
7 certification. Plaintiff's Counsel has the means and willingness to continue the vigorous  
8 representation of Plaintiff and the Class members and will do so through trial if necessary.

9 75. Plaintiff's Counsel has no known conflicts which would prevent them from  
10 adequately representing the putative class.

11 I declare under penalty of perjury under the laws of the United States of America that the  
12 foregoing is true and correct.

13 Executed on January 18, 2018, in Minneapolis, Minnesota.

14   
15 \_\_\_\_\_  
16 Melissa S. Weiner  
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